Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

JEFFREY HALEY, an individual citizen,

Petitioner,

v.

JAN MICHELS, ANNE SEIDEL,
and JONATHAN BURKE,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

JEFFREY T. HALEY
13434 SE 27th Place
Bellevue, WA 98005
425-451-9876

QUESTIONS PRESENTED FOR REVIEW

1. Does the doctrine of *separation of powers* prohibit a state court from taking property from a citizen to fund its administrative activities without authorization from the state legislature?

2. Is a three day delinquency in filing a notice of appeal "excusable neglect" where the notice of appeal was timely mailed to the district court clerk but lost in the mail, yet copies mailed at the same time were timely received by opposing counsel and the court of appeals, and a replacement was received by the district court three days after the deadline, and where the district court implicitly allowed an extension of time by treating the replacement as timely filed?

LIST OF PARTIES

Plaintiff: Jeffrey T. Haley, former attorney at law in Washington state

Defendants: Jan Michels, Anne Seidel, and Jonathan Burke, employees of the Washington state courts via its agency, the Washington State Bar Association

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OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is unreported and appears at App. 1.

The order of the District Court, Western District of Washington is unreported and appears at App. 2.

The final Judgment of the District Court, Western District of Washington is unreported and appears at App. 5.

JURISDICTIONAL STATEMENT

Because this case was dismissed by the District court on a Rule 12 motion to dismiss prior to filing an answer, the facts alleged in the complaint must be taken as true. The complaint alleges a violation of 42 U.S.C. § 1983 consisting of the taking of private property without due process in violation of the US Constitution by persons acting with insufficient legal authority but under color of state law. These allegations gave the District court jurisdiction under the cited statute.

The case was dismissed by the District court on February 21, 2008 with a final order of dismissal. Two days later, the plaintiff mailed copies of a Notice of Appeal to the district court, the court of appeals, and opposing counsel. The Notice of Appeal mailed to the district court was lost in the mail and a replacement was received by the district court on March 25, three days after the deadline for filing the notice of

appeal in the district court. The replacement notice of appeal was treated by the district court as timely filed.

After the appeal was docketed and scheduled by the court of appeals, the defendants filed a motion to dismiss the appeal which motion was granted July 17, 2008. This petition for certiorari was filed in the U.S.S.C. within 90 days as required by court rules.

CONSTITUTIONAL PROVISION AT ISSUE:

SEPARATION OF POWERS

STATEMENT OF PROCEDURAL HISTORY

The plaintiff, a former attorney at law, alleged that officers of the Washington state courts were violating the US Constitution by taking his property to fund their operations without authorization from the state legislature. He filed suit under the civil rights law, 42 U.S.C. § 1983, seeking an injunction and, if any property was unreturnably taken before the injunction issued, damages.

Before answering, some of the defendants filed a Rule 12 motion to dismiss on various grounds. The district court determined that it did not have jurisdiction to hear the case and dismissed it. The plaintiff appealed.

The Court of Appeals dismissed the first appeal in this case because the district court's first dismissal below did not explicitly dismiss the claims against two parties that did not join the motion to dismiss, with a result that the dismissal below was not explicitly final for all parties.

The parties to the appeal then rectified this defect by stipulation and the district court entered a new judgment on a stipulated dismissal on February 21, 2008. Two days later on February 23, 2008, the plaintiff prepared a one page Notice of Appeal with a certificate of mailing and mailed it by US mail to the district court clerk, along with five photocopies. The plaintiff did not include the appeal fee or the Civil Appeals Docketing Statement. On the same day, the plaintiff filed a motion in the court of appeals, with a copy to opposing counsel, asking the court to reconsider its dismissal and reopen the first appeal, which was already fully briefed and ready for oral argument. The plaintiff attached to the motion a copy of the Notice of Appeal that Appellant mailed to the district court on the same day. The motion was unopposed.

The Court of Appeals denied the motion to reopen the first appeal. The plaintiff then prepared a Civil Appeals Docketing Statement and mailed it to the district court along with a copy of the previously mailed Notice of Appeal and a check for the filing fee. These were received by the district court on March 25, thirty-three days after the judgment of the

district court was entered on February 21, three days after the 30 day deadline.

The docket entry computer records maintained by the district court clerk do not show that the Notice of Appeal mailed February 23 was received by the district court. It was apparently lost in the mail. The files of opposing counsel and the court of appeals show that copies of the signed Notice of Appeal with its certificate of mailing were mailed on the 23rd of February to the district court as well as to opposing counsel and the court of appeals.

STATEMENT OF FACTS

I, Jeffrey Haley, write this statement in the first person as I am appearing pro se. I was an attorney at law and a member of the Washington State Bar Association until January 2006 when I declined to pay annual bar dues or submit evidence of completion of CLE requirements. On August 21, 2006, I filed the complaint in this action (see Excerpt of Record pp 1-5) which included the following factual allegations, all of which must be taken as true for purposes of this appeal:

> 2. I joined my brother and friends as an investor in a corporate business enterprise for which I also served as an attorney. I then acted on oral instructions and authorization from all shareholders of the corporation to transfer certain property to a new corporation in which I had an interest.

3. The Washington State Bar Association (WSBA) brought a preceding for an ethical violation and the Washington State Supreme Court (WSSC) determined that I should have obtained the instructions and authorization in writing. For this lapse, the WSSC imposed a reprimand. With this outcome, I was the prevailing party because the result matched the position that I argued to the WSSC and offered to the WSBA when the original proceeding first commenced.

4. The WSSC ordered me to pay to the WSBA $9,888.13 plus interest for costs of the proceeding, even though I prevailed on all issues.

5. Rather than pay the $9,888.13 plus interest, I prefer to suffer a suspension of my right to practice law until I pay. I believe that the law gives me this option. . . .

6. The WSBA requested that the WSSC send its judgment for costs to the King County Superior Court to be entered in the court records and become a lien against my real estate as a first step toward depriving me of my property to collect the costs.

7. The WSBA is an agency of the government of the state of Washington. The actions of its agents are government actions taken under color of law.

8. In this case, defendants Jan Michels, Anne Seidel, and Jonathan Burke are agents

of the WSBA that are carrying out or planning to carry out the actions of the WSBA.

9. The WSBA agents intend to, and will if not restrained, take property from me against my will to fund its operations as an agency of the government of the state of Washington.

. . . .

15. Because the WSBA and the WSSC do not have authority to do this, such an action by their agents or an agent of the King County Superior Court will be a deprivation of my property without authority of law. . . .

. . . .

18. In its function to enforce lawyer discipline, the WSBA does not have authority to take property of any citizen, whether or not that citizen is or was a member of the WSBA. The legislature has not granted such authority. . . .

19. In its function to enforce lawyer discipline, the WSSC does not have authority to take property of any citizen, whether or not that citizen is or was a member of the WSBA. The legislature has not granted such authority. . . .

. . . .

In addition to the above facts alleged in the complaint which must be taken as true, I offer the following judicially noticeable facts:

> 21. The Washington State Legislature has not granted any authority to the Washington State Supreme Court for the purpose of administering the lawyer discipline system.
>
> 22. The Washington State Legislature has not granted any authority to the WSBA for the purpose of administering the lawyer discipline system.
>
> 23. The administration of the Washington attorney discipline system is governed by the Rules for Enforcement of Lawyer Conduct (ELCs) which were drafted and adopted by the WSBA and the Washington Supreme Court. None of the Rules for Enforcement of Lawyer Conduct have been reviewed or approved or adopted by the Washington State Legislature.
>
> 24. After the complaint in this action was filed, on September 8, 2006, on application by the WSBA acting though its agents defendants Michels, Seidel, and Burke, the clerk of the WSSC entered a judgment against me in favor of the WSBA, an agency of the WSSC, in the amount of $9,888.13 plus accrued interest with interest to accrue at 12% per annum and transmitted a copy of that judgment to the clerk of the King County Superior Court.

27. The clerk of the King County Superior Court recorded the judgment in the records of the King County Superior Court such that it created a lien on my residence.

In addition to the above facts, to focus on the important legal issues and avoid confusion with side issues, I offer the following articulations of the law that I believe are undisputed:

28. Under the Washington State Constitution, the Washington Supreme Court has exclusive responsibility in the state to administer the lawyer discipline system and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline. Persons carrying out these functions act under the Supreme Court's authority.

29. The Washington State Supreme Court has delegated authority for administering the lawyer discipline system to the Washington State Bar Association (WSBA).

30. With their powers limited by rules adopted by the State Supreme Court, the WSBA is governed by a board of governors who are elected by members of the WSBA and are not elected by the citizens or appointed by an official elected by the citizens.

ARGUMENT

The underlying appeal involves important issues of separation of powers. In the last eight years, separation of powers has been a very important issue in this country, specifically limitations on powers of the executive and encroachment by the executive upon powers of the judiciary. The underlying appeal involves encroachment by state courts on the powers of the state legislature. This is an issue that has been very little addressed by state or federal courts since this country was founded. This is an important issue because separation of powers – in all directions, between all three branches – is of foundational importance to our constitutional form of government.

This Court should take this opportunity to explain to the American people and all branches of government that separation of powers imposes limitations on powers of all three branches, even the courts, not just on the legislature and the executive.

The parties have submitted complete briefs to the Ninth Circuit Court of Appeals in this matter (No. 07-35130) and the case is ready for oral argument. This Court should enter a *per curiam* opinion directing the Ninth Circuit Court of Appeals to hear this appeal.

Sub-Issues Presented For Review

1. Do the federal district courts have jurisdiction under 42 U.S.C. § 1983 to enjoin officers of state courts from violating the US Constitution by taking

property of a former attorney at law to fund their operations without authority from the state legislature?

2. Does the due process clause of the US Constitution require that state courts comply with state constitutional limitations on powers of branches of government and obtain authorization from the state legislature before they take property from citizens to fund their operations?

3. Is a former attorney at law who joined the state bar association a special class of citizen from whom the state bar association can take property to fund its operations without authorization from the state legislature?

4. Is a three day delinquency in filing a notice of appeal "excusable neglect" where the notice of appeal was timely mailed to the district court clerk but lost in the mail, yet copies mailed at the same time were timely received by opposing counsel and the court of appeals, and a replacement was received by the district court three days after the deadline, where the district court implicitly allowed an extension of time by treating the replacement as timely filed?

1. The federal district courts have jurisdiction under 42 U.S.C. § 1983 to enjoin officers of state courts from violating the US Constitution by taking property of a former attorney at law to fund their operations without authority from the state legislature.

As plaintiff, I alleged a violation of a federal statute, 42 U.S.C. § 1983 which states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

This statute specifically gives the federal courts subject matter jurisdiction.

However, the district court below read the cases of *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966) and *McKay v. Nesbett*, 412 F.2d 846 (9th Cir. 1969), as removing the court's jurisdiction in this case.

In *Clark v. State,* Clark was disbarred and sought a decree to vacate the judgment of disbarment. He alleged that the disciplinary proceedings were conducted in such a manner as to violate his rights under the Fourth, Eighth, and Fourteenth Amendments. That is, he attempted to question in federal court whether the discipline was well founded. He sought to challenge the state court's withdrawal of his privilege to appear in court representing others. The state courts have an exclusive scope of authority to determine who can represent others before them.

The facts in *MacKay v. Nesbett* were essentially the same. An attorney was suspended from the privilege of representing others in court for one year and he sued in federal court seeking a declaration that the order of suspension was invalid.

In my case, I am not challenging the discipline imposed or the grounds for it. I am not objecting to the state court determining without review whether I may represent others before them. I am questioning whether the state courts have authority to take my property without approval from the legislature. No issue like this was presented in *Clark* or *MacKay*.

I do not contend that the courts cannot determine who may represent others before them without authority from the legislature. I *do* contend that the courts cannot order citizens to give property to the courts for the courts' use without legislative authority. I contend this is true whether or not the citizen is

a former attorney at law or was ever a member of the bar association. When one joins the bar association, one does not give up one's rights as a citizen.

The district court took the position that I was seeking "an order from this court that would disturb a final state court judgment." This is flatly incorrect. No court has issued a decision on the issue raised in this case. Some time before my discipline case came up, the Washington State Supreme Court adopted a rule that, as the WSBA is attempting to apply it in my case, is unconstitutional. As soon as the WSBA stated its intention to ask the clerk of the Washington State Supreme Court to apply the rule in my case and before the action to apply the rule was commenced, I filed this federal court action. No state court has made any ruling on whether this rule may constitutionally be applied to me.

As part of a discipline proceeding, the state court decided that I should pay about $10,000 to the Bar Association. I do not contest this decision. I question what powers the WSBA has at its disposal to obtain the ordered payment. I agree that the state courts may withhold my privilege to represent others before the courts of the State of Washington until the amount is paid. I agree that under *Clark* and *MacKay*, I may not challenge such a withholding in federal court. I merely contend that, if the state courts want to take my property from me against my will to fund their operations, they must have a constitutional power to do so, and the recording of a lien against my real estate is an unconstitutional taking

without such constitutional power and therefore a violation of due process.

Thus, I do not challenge any final decision of a state court. I do not contest the decision of the State Supreme Court that I should pay about $10,000 to the WSBA. I only contest their power to take my property against my will. The state courts have not issued any decision on this issue.

As stated in my complaint, I am asking this court to rule that the WSSC and its agency the WSBA do not have constitutionally required authority to impose a tax or charge on any citizen or forcibly collect a tax or charge from any citizen to fund their operations. Although the WSBA asserts that it obtained this authority by delegation from the State Supreme Court when the Supreme Court adopted rules proposed by the WSBA, the State Supreme Court did not have any such authority under the state Constitution to delegate. And, because the WSBA does not have such authority, any steps it takes which have the effect of depriving me of property are done without due process (which requires constitutional authority for any process) and are therefore a "deprivation of" my "rights, privileges, or immunities secured by the Constitution and laws" as quoted from the federal statute above.

Under the doctrine of separation of powers which is a part of the state Constitution, only the legislature has the power to impose taxes or other charges on citizens to fund the courts or Bar Association

operations. There is an unacceptable risk of abuse when legislative and judicial powers are claimed by a single agency of government, especially where the governors of that agency are elected by self-selected members of a profession and not elected by the citizens or appointed by an elected official.

2. The due process clause of the US Constitution requires that state courts comply with state constitutional limitations on powers of branches of government and obtain authorization from the state legislature before they take property from citizens to fund their operations.

Consider this summary of key facts:

(1) The WSBA is an agency of the Washington Supreme Court which is an agency of state government.

(2) At the request of the WSBA acting as an executive branch of government, a lien for about $10,000 with interest has been recorded against my real estate by court clerks, which would already be a damaging taking of my property if I wanted to transfer my property to another or obtain a home equity loan, which I will want to do one day.

(3) To collect the about $10,000, acting as an executive branch of government, the WSBA intends to take a portion of my real estate when I sell it, if not sooner, and intends to take personal property from me.

(4) The WSBA is not seeking money from me as a condition for granting or maintaining a license or allowing me to represent others before the courts of Washington State.

(5) The WSBA's sole purpose in taking my property is to fund its prospective governmental functions, all of which are unrelated to me.

(6) There are no facts which would give the WSBA grounds to assert a monetary claim against me under any state statute or under any common law rule whether tort, contract, property, or other.

(7) The WSBA has not been granted any authority by the state legislature, either directly or via a grant of authority to the courts, to assess taxes or charges against me or to enforce against anyone or against any property any taxes or charges invented by the WSBA or by the Washington State Supreme Court.

(8) The only basis the WSBA has for asserting a right to take my property to fund its prospective governmental functions is a rule of attorney discipline invented by the WSBA and adopted by the Washington State Supreme Court that has not been reviewed or approved or adopted by the State Legislature.

(9) In the disciplinary proceeding from which the WSBA's claim arises, I was the prevailing party because my legal analysis on every charge was adopted by the State Supreme Court and the final

outcome, a reprimand, was offered by me to the WSBA and refused by the WSBA at the outset of the proceeding before any significant costs were incurred by either side.

2A. The doctrine of separation of powers places limits on the legislative functions that can be exercised by the judiciary and those limits have been exceeded.

The separation of powers doctrine is a part of the Washington State Constitution and it follows the federal doctrine. *Carrick v. Locke*, 125 Wn.2d 129, 135 (1994). Under the federal separation of powers doctrine, the traditional narrow rule was that the judicial branch could do practically nothing of a legislative character – it could not even adopt rules of court – they needed to be adopted by Congress and approved by the President. When Congress first adopted rules for federal courts in 1934 and the rules were approved by the President, there was no assertion that the courts could do this on their own. Subsequently, 28 U.S.C. § 2072 was adopted in 1948. With amendments through 1962, this statute delegated from Congress to the federal courts power to adopt rules of procedure which would take effect 90 days after they were reported to Congress if Congress failed to act to change them. In the fall of 1962 and January of 1963, the U.S. Supreme Court approved changes to the rules and reported them to Congress under this statute. Justices Douglas and

Black dissented, expressing the opinion that, the delegation statute notwithstanding, separation of powers as expressed in the US Constitution required any such rules to be specifically voted on by Congress and considered and approved by the President. *In Re Federal Court Rules*, 384 U.S. 865, 866 (1963).

The views of Douglas and Black did not prevail. Since 1963, the rule has become well settled that courts can adopt rules of procedure without the rules being adopted by a legislature and approved by a governor. *See* J. Weinstein, REFORM OF COURT RULE MAKING, 82 (1977).

The powers of courts extend farther into the legislative arena than merely the power to adopt rules of procedure. Specifically, there is a small but well established class of cases in which courts have held that that they have the power to compel expenditures from the public treasury when necessary to administer justice, such as to pay probation officers, criminal defense counsel, services of the sheriff, and stenographers. *E.g., Zilstra v. Piva*, 85 Wn.2d 743 (1975); *State ex rel. Johnson v. Taulbee*, 423 N.E.2d 80 (1981); *Smith v. Miller*, 153 Colo. 35, 384 P. 2d 738 (1963); *Leahey v. Farrell*, 66 A.2d 577 (PA 1949).

Although the courts have the power to compel expenditures from the public purse when necessary to administer justice, they do not have the power to raise taxes or create new taxes for the same purpose. As stated by the Supreme Court of Pennsylvania:

> "The function of the judiciary to administer justice does not include the power to levy taxes in order to defray the necessary expenses in connection therewith. It is the legislature which must supply such funds."

Leahey v. Farrell, 66 A.2d 577, 579 (1949).

In *Missouri v. Jenkins*, 495 U.S. 33, 110 S.Ct. 1651 (1990), the district court had ordered a local tax increase to fund better schools to achieve desegregation. The Eighth Circuit Court of Appeals approved the tax increase and the US Supreme Court overruled, stating: "In assuming for itself the fundamental and delicate power of taxation, the District Court not only intruded on local authority but circumvented it altogether." 495 U.S. 33 at 51. In a concurring opinion, Justice Kennedy explained at pages 61 to 69:

> Other Circuits that have faced funding problems arising from remedial decrees have concluded that, while courts have undoubted power to order that schools operate in compliance with the Constitution, the manner and methods of school financing are beyond federal judicial authority. *See National City Bank v. Battisti,* 581 F.2d 565 (CA6 1977); *Plaquemines Parish School Bd. v. United States,* 415 F.2d 817 (CA5 1969). The Third Circuit, while leaving open the possibility that in some situations a court-ordered tax might be appropriate, has also declined to approve judicial interference in taxation. *Evans v. Buchanan,* 582 F.2d 750 (1978), *cert. denied, sub nom. Alexis I. DuPont School*

Dist. v. Evans, 447 U.S. 916 (1980). The Sixth Circuit, in a somewhat different context, has recognized the severe intrusion caused by federal court interference in state and local financing. *Kelley v. Metropolitan County Bd. of Education of Nashville and Davidson County, Tenn.,* 836 F.2d 986 (1987), *cert. denied,* 487 U.S. 1206 (1988).

. . . .

Article III of the Constitution states that

> [t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

The description of the judicial power nowhere includes the word "tax," or anything that resembles it. This reflects the Framers' understanding that taxation was not a proper area for judicial involvement.

> The judiciary . . . has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever.

The Federalist No. 78, p. 523 (J. Cooke ed. 1961) (A. Hamilton).

Our cases throughout the years leave no doubt that taxation is not a judicial function. Last Term, we rejected the invitation to cure an unconstitutional tax scheme by

broadening the class of those taxed. We said that such a remedy "could be construed as the direct imposition of a state tax, a remedy beyond the power of a federal court." *Davis v. Michigan Dept. of Treasury,* 489 U.S. 803, 818 (1989). Our statement in *Davis* rested on the explicit holding in *Moses Lake Homes v. Grant County,* 365 U.S. 744 (1961), in which we reversed a judgment directing a District Court to decree a valid tax in place of an invalid one that the State had attempted to enforce:

> The effect of the Court's remand was to direct the District Court to decree a valid tax for the invalid one which the State had attempted to exact. The District Court has no power so to decree. Federal courts may not assess or levy taxes. Only the appropriate taxing officials of Grant County may assess and levy taxes on these leaseholds, and the federal courts may determine, within their jurisdiction, only whether the tax levied by those officials is or is not a valid one.

Id. at 752.

. . . .

. . . . For this reason, the District Court's direct order imposing a tax was more than an abuse of discretion, for *any attempt to collect the taxes from the citizens would have been a blatant denial of due process.* [emphasis added by present author]

. . . .

A judicial taxation order is but an attempt to exercise a power that always has been thought legislative in nature. The location of the federal taxing power sheds light on today's attempt to approve judicial taxation at the local level. Article I, § 1 states that

> *[a]ll* legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. . . .

(Emphasis added.) The list of legislative powers in Article I, § 8, cl. 1 begins with the statement that "[t]he Congress shall have Power To lay and collect Taxes. . . ." As we have said, "[t]axation is a legislative function, and Congress . . . is the sole organ for levying taxes." *National Cable Television Assn. Inc. v. United States,* 415 U.S. 336, 340 (1974) (citing Article I, § 8, cl. 1).

. . . . Our statement in a case decided more than 100 years ago should apply here.

> This power to impose burdens and raise money is the highest attribute of sovereignty, and is exercised, first, to raise money for public purposes only; and, second, by the power of legislative authority only. It is a power that has not been extended to the judiciary. . . .

Rees v. City of Watertown, 19 Wall. 107, 116-117 (1874).

In the present matter, the WSBA asserts that it has the power, by delegation and approval from the Washington State judiciary, to create and impose a charge on a citizen who asks nothing of the WSBA or the courts of the State of Washington – not to fund a program by the executive branch of government such as schools, but *to fund itself*, a part of the judicial branch.

In all of American legal history, this is may be the most audacious overreaching into the legislative arena ever taken by a judicial branch of government. After an extensive search, I have found no case where an agent of the judiciary has ever asserted, with or without success, that a court has the power to take property from a citizen for the purpose of funding its own governmental activities without an authorizing statute from the legislature which sets the amount to be taken and the procedure to follow.

For the state judicial branch to assert that it can invent and enforce taxes or other charges on citizens to fund *its own activities*, without a delegation of authority from the legislature, and then act as an executive branch of government to take property to enforce those taxes or other charges, raises a potential for abuse that constitutes the core purpose for separation of powers.

The citizens of this country have recently witnessed overreaching for power by the US executive branch in violation of the separation of powers doctrine. Fortunately, it has been checked by the federal

courts. Now we have a case of state courts overreaching to aggrandize to themselves legislative taxing powers to fund their own activities. Protecting the separation of powers doctrine to ensure that governmental powers of each branch are limited has been an essential role of the federal courts since *Marbury v. Madison* 5 U.S. 137 (1803). It is a role that the federal courts are now called upon to fulfill, once again, to protect our United States form of government for the benefit of future generations.

2B. Hypothetical cases:

To help bring this issue into focus, I offer hypothetical cases for the court's consideration:

First, to fund various court operations, it might be good policy for the courts to assess more "user fees" like filing fees and fees for copies and transcripts. An example of a user fee that might be good policy is a 1% fee on the value of estates probated by the courts. This fee would fall on those who make use of the probate system, roughly in proportion to their ability to pay, and would not fall on citizens who do not use the system.

Suppose the state courts were to adopt such a fee system without legislative authorization and then, if a party didn't pay the fee, a court filed a judgment against the party and recorded a lien on his real estate. Is there any doubt this exceeds the power of the courts and constitutes a taking of property

without due process in violation of the Fifth and Fourteenth Amendments to the US Constitution?

Second, suppose a state judicial branch decided, without legislative authorization, that it needs to increase last year's bar dues by $200 to offset a major expense incurred last year and courts then filed a lien against property of a lawyer who retired before the dues increase was effective and didn't pay the retroactive assessment. How could the proper analysis be different?

Finally, suppose a state judicial branch decided, without legislative authorization, to fund its future operations by imposing a $10,000 levy on a former lawyer who ceased practicing law and then, when it was not paid, took property from the former lawyer's estate? This is the case before the court.

3. A former attorney at law who joined the state bar association is not a special class of citizen from whom the bar association can take property to fund its operations without authorization from the state legislature.

The defendants may argue that the assessment of about $10,000 is a part of the "discipline" imposed on me and that the general power of the courts to determine who will represent others before them gives them the power to take property from attorneys at law who are disciplined even though they do not have power to take property from other citizens to

fund their operations. As discussed above, no other court in the history of this county has ever made such an assertion of unchecked power.

When I joined the state bar association, I did not agree to pay costs of a future disciplinary proceeding. There is no contract which says I should do so; there is no statute which says I should do so; and there is no common law rule which says I should do so. If a person joins a private club and the members of the club decide that the person should pay an extra part of the club's expenses, the club cannot force the person to pay by taking their property. The club can merely withhold the privileges of membership. The WSBA is in the same position.

4. A three day delinquency in filing a notice of appeal is "excusable neglect" where the notice of appeal was timely mailed to the district court clerk but lost in the mail, yet copies mailed at the same time were timely received by opposing counsel and the court of appeals, and a replacement was received by the district court three days after the deadline, and where the district court implicitly allowed an extension of time by treating the replacement as timely filed.

The court of appeals should have denied the defendant's motion to dismiss the appeal due to an untimely filed notice of appeal for several reasons.

First, the three day delay had no effect on the expectations of opposing parties because they received in the mail, mailed on February 23, a copy of the Notice of Appeal mailed to the district court on the same day. They did not learn that the original sent to the district court was lost in the mail and not received by the district court until they reviewed the docket sheet to prepare the appeal.

Second, the three day delay is de minimis and had no effect on the courts. The district court treated the Notice of Appeal that it received on March 25 as timely filed.

Third, the Appellant's reliance on the US mail to deliver the Notice of Appeal mailed on February 23 was reasonable and customary. A pro se Appellant should not be penalized for failure of the postal system to deliver a Notice of Appeal.

Fourth, FRAP 4(a)(5) allows extensions of time to be granted on ex parte motion made after the appeal deadline has been missed if the movant shows excusable neglect or good cause. In this case, the delay was caused by reliance on the postal service. Reliance on the postal service rather than making an in-person delivery is per se excusable when the postal service fails, and the postal system's failure constitutes good cause. Appellant's filing of a second copy of the Notice of Appeal three days after the deadline should be construed as an implicit ex parte motion to extend the deadline by three days and the district court's subsequent normal processing of the appeal should be

construed as an implicit grant of the motion by the district court.

CONCLUSION

Both the US Constitution, Fifth and Fourteen Amendments, and the Washington State Constitution, Article I Section 3, guarantee that my property cannot be taken from me without due process of law. Due process of law requires that any taking of my property to fund prospective operations of government be duly authorized by a branch of government that has the constitutional power to decide what property should be taken from which citizens for what purposes. Under separation of powers, only the legislature has that power. Because there is no authorization from the legislature for the actions of the WSBA in this case, efforts of the defendants to take my property must be declared invalid.

This court should enter a *per curiam* order directing the Ninth Circuit Court of Appeals to hear this appeal. The appeal has already been fully briefed and is ready for oral argument.

DATED this 13th day of November, 2008.

Respectfully submitted,

JEFFREY T. HALEY

APPENDIX

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1. Dismissal of Appeal by Court of Appeals ..... App. 1
2. District Court Order of Dismissal ..... App. 2
3. District Court's Final Judgment of Dismissal .... App. 5

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFFREY THORNTON HALEY, an individual citizen, Plaintiff-Appellant, v. JAN MICHELS; et al., Defendants-Appellees.	No. 08-35254 D.C. No. 2:06-cv-01191-JLR Western District of Washington, Seattle ORDER (Filed Jul. 17, 2008)

Before: SCHROEDER, LEAVY and IKUTA, Circuit Judges.

Appellees' motion to dismiss this appeal for lack of jurisdiction is granted. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Appellant did not file a timely motion for extension of time pursuant to Federal Rule of Appellate Procedure 4(a)(5).

All other pending motions are denied as moot.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFFREY HALEY, Plaintiff, v. JAN MICHELS, et al., Defendants.	CASE NO. C06-1191JLR ORDER

This matter comes before the court on a motion to dismiss (Dkt. # 6) from Defendants Jonathan Burke, Anne Seidel, and Jan Michels – all officers of the Washington State Bar Association ("WSBA"). The court has considered the papers filed in connection with this motion and finds the matter appropriate for disposition without oral argument. For the reasons stated below, the court GRANTS Defendants' motion.

On two separate occasions, the Washington State Supreme Court imposed disciplinary measures against Plaintiff, an attorney, for various ethical violations. *In Re Hailey* [sic], 126 P.3d 1262 (Wash. 2006) (imposing a reprimand); *In Re Hailey* [sic], 138 P.3d 1044 (Wash. 2006) (imposing a one-year suspension from practice). The WSBA commenced both actions pursuant to the Rules of Enforcement of Lawyer Conduct. Following the reprimand order in the first proceeding, the WSBA filed a statement of costs and expenses with the Clerk of the Court. The Court entered judgment against Plaintiff in favor of

the WSBA in the amount of $9,888.13, plus interest. At the request of the WSBA, the Clerk transmitted the judgment to King County Superior Court.

Plaintiff filed suit in this court to enjoin the WSBA from collecting on the judgment. Plaintiff contends that he would prefer to suffer a suspension of his right to practice, rather than pay the judgment or suffer a lien on his real property. He argues that WSBA's attempt to collect on the judgment constitutes a taking without due process. He also contends that the WSBA lacks authority, under the separation of powers doctrine, to "collect a tax" from him to fund its attorney disciplinary program.[1] Pl.'s Opp'n at 2.

The court concludes that it lacks jurisdiction over this matter. *See Clark v. State of Washington,* 366 F.2d 678, 681 (9th Cir. 1966) ("The federal courts are without power to issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties, including disbarment proceedings."). Notwithstanding Plaintiff's characterization of his claim, what he seeks is an order from this court that would disturb a final state court judgment. *See, e.g.,* Compl. ¶ 4 ("The [Washington State Supreme

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[1] The court finds disingenuous Plaintiff's contention that the WSBA is attempting to collect an unconstitutional "tax." Rather, the WSBA seeks to enforce a state court judgment rendered in its favor. Plaintiff does not cite nor is the court aware of any authority that stands for the proposition that collecting on a judgment is akin to imposing an unconstitutional tax.

Court] ordered me to pay the WSBA $9,888.13 plus interest for costs of the proceeding, even though I prevailed on all issues."). This court lacks the power to do so. *See MacKay v. Nesbett,* 412 F.2d 846, 846 (9th Cir. 1969) ("[O]rders of a state court relating to the admission, discipline, and disbarment of members of its bar may be reviewed only by the Supreme Court of the United States on certiorari to the state court, and not by means of an original action in a lower federal court.").

For the reasons stated above, the court GRANTS Defendants' motion to dismiss Plaintiff's claims with prejudice. The court directs the clerk to enter judgment consistent with this order.

Dated this 25th day of January, 2007.

/s/ James L. Robart
JAMES L. ROBART
United States District Judge

United States District Court
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEFFREY HALEY,
Plaintiff,
v.
JAN MICHELS, et al.,
Defendants.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: C06-1191JLR

(Filed Feb. 21, 2008)

__ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

The court GRANTED the parties' stipulated order of dismissal of Defendants C.J. Merritt and Barbara Miner (Dkt. # 25). Having already granted the other Defendants' motion to dismiss (Dkt. # 17) and there being no other pending claims, the court DISMISSES this action in its entirety.

Dated this 21st day of February, 2008.

BRUCE RIFKIN
Clerk

/s/ Mary Duett
Deputy Clerk